

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

JUDGMENT

S.B.Civil writ Petition No.1648/1996

Kana Ram. vs. Board of Revenue and others.

Date : 29.8.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr.S Rajpurohit for Mr.JR Beniwal, for the petitioner.

Mr.DS Udawat, for the respondent no.3

Mrs.RR Kanwar, Dy.GA.

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BY THE COURT :

Heard learned counsel for the parties.

Respondent no.3 Temple Mahadev Ji Maharaj of Village Mev, Tehsil Sojat filed a suit for eviction of the petitioners under Sections 59, 91 and 183 of the Rajasthan Tenancy Act on the grounds that the land is deity land and was illegally sold by the pujari of the temple to the petitioners and on the strength of the said sale deed, the petitioners/defendants encroached

upon the deity land in the year 1967. The plaintiff's suit was decreed by the trial court vide judgment and decree dated 22.12.1980 holding the land to be deity land on the basis of copy of khewat khatauni of samwat year 2010 to 2019 wherein the land has been recorded in the name of doli Temple Mahadevji. In the Col.4 of the said document, the name of Hemnath was shown as pujari, therefore, the trial court held that pujari had no right to sell the property of the deity and the plea of adverse possession is not available for the property of minor. The appeal preferred against the judgment and decree of the trial court dated 22.12.1980 was dismissed by the Revenue Appellate Authority vide judgment and decree dated 25.5.1994 and the Board of Revenue dismissed the second appeal vide impugned judgment dated 4.10.1995 in limini at admission stage. Hence, this writ petition by the petitioners.

It is contended by learned counsel for the petitioners that the land in question was a maufi land and with the resumption of maufi and jagir, the person in actual possession became khatedar tenant and it is also submitted that before the petitioners purchased the land in question, the land was recorded in the name of Hemnath. In view of the above reasons, two courts below committed serious error in decreeing the suit of the petitioner which was filed after inordinate delay

and after 12 years of possession of the petitioner.

I considered the submissions of learned counsel for the parties and perused the facts of the case.

The petitioner himself placed on record the copy of sale deed as Annex.1 wherein, it is clearly mentioned that the land is doli land. However, the seller thereafter stated that the land is khudkast land but that fact is contrary to his first admission of the land being doli land as well as contrary to the revenue record. Therefore, so far as the finding of fact recorded by the courts below holding the land to be of doli land is concerned, it appears to be correct. The contention of the petitioner that the pujari was cultivating the land and, therefore, he became khatedar tenant after resumption of muafi and jagir by operation of the Act, then that contention appears to be not raised before the courts below and has been sought to be raised for first time before this Court. This is question of fact and cannot be permitted at this stage that after loosing in all courts without taking such plea.

It is further relevant to mention here that the petitioner failed to substantiate his this argument that the land in question was resumed and the seller

became khatedar tenant by virtue of operation of law.

In view of the above, I do not find any merit in this writ petition and the same is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya